

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1374 OF 2006
IN
SUIT NO.256 OF 1999

Banwarilal H. Khaitan ... Plaintiff

V/s.

M/s.PLA Exports Pvt. Ltd. & Ors. ... Defendants

a/w
NOTICE OF MOTION NO.1587 OF 2006
IN
SUIT NO.1341 OF 2000

M/s.PLA Exports Pvt. Ltd. & Ors. ... Defendants

V/s.

Banwarilal H. Khaitan ... Plaintiff

Ms.Indu Verma for Plaintiff in Suit No.256 of 1999 and
Defendant No.1 in Suit No.1341 of 2000

Mr.V.M. Sen for Defendant No.1 and for Plaintiff in
Suit No.1341 of 2000

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 8, 2006**

P.C.:

. Notice of Motion No.1587 of 2006 in Suit No.1374 of 2000 is being heard alongwith Notice of Motion No.1374 of 1996 in Suit No.256 of 1999. Suit No.256 of 1999 has been filed by Banwarilal H. Khaitan (hereinafter referred to as 'Khaitan'). This suit has sought a declaration that the plaintiff is the exclusive copyright holder of the suit film "Sarphira" and not the the Defendants i.e., M/s.PLA Exports Pvt. Ltd. (hereinafter referred to as PLA), the SET Satellite Singapore Pvt. Ltd. and Sony Picture Entertainment.

2. The plaint has been amended in April 2006 and

other parties have been added as Defendants. Certain other consequential amendments have been made in the plaint. Besides, additional prayers are sought and one of the prayers is for a sum of Rs.6 lacs by way of damages. Khaitan had taken out a Motion in this Suit which was dismissed by this Court on 12.2.1999. While dismissing the Motion, this Court has observed that it was evident that the plaintiff had not come to the Court with clean hands and that the Court would be failing in its duty by exercising discretion in favour of such a dishonest litigant. Appeal No.311 of 1999 was preferred by Khaitan which was also dismissed on 8.6.1999 by the Division Bench of this Court.

3. Suit No.1341 of 2000 has been filed by PLA. A declaration is sought in this Suit that an agreements dated 13.3.1986 and 13.12.1994 are valid, subsisting and binding on Defendant No.1 in the Suit i.e., Khaitan. A declaration is also sought that PLA is the exclusive holder of the rights which have been conferred on it by the agreement dated 13.3.1986 and 13.12.1994 for the territory and the period stipulated therein. Further reliefs are also sought which are not material for the purpose of deciding the present Motion. Notice of Motion No.1117 of 2000 was taken out by PLA. Certain orders were passed in that Motion on 31.3.2000 and the Motion was disposed off on 7.4.2000. An injunction was granted against Khaitan in the following terms:

(a) That pending the hearing and final disposal of the suit, the Defendant Nos.1 and 2 be restrained by a temporary order of injunction of this Hon'ble Court from (i) in any manner distributing, exhibiting, exploiting, telecasting or causing to be so done, the suit film and (ii) from in any manner exercising, assigning, selling or in any manner disposing of any rights which have been conferred on the Plaintiff under the agreements dated 13th March 1986 and 13th December 1994 in respect of the territory which have been allotted to the Plaintiff under the said agreements.

4. Khaitan now seeks to vacate this order by filing Notice of Motion No.1587 of 2006 in the suit filed by PLA. He has also filed Notice of Motion No.1374 of 2006 in his Suit for an injunction restraining all the parties arrayed as defendants in the suit from assigning, selling, disposing off or otherwise dealing with the suit film "Sarphira". Khaitan has also sought an injunction against the Defendants from releasing, exhibiting and exploiting and/or telecasting the suit film.

5. A few facts which are relevant for deciding the present Motion are as under:

An agreement was executed on 13.3.1986 between Khaitan and PLA under which PLA was leased the rights of distribution, exhibition and exploitation of the Motion picture "Sarphira" for a period of 21 years. The territory in respect of these rights was for the entire world excluding India but including the airborne rights and high sea rights. Another agreement was executed on

7.12.1994 whereby PLA executed an agreement assigning its rights in respect of the film to M/s.Shemaroo Video Private Limited, Defendant No.3 in Suit No.1341 of 2000 for a period of 5 years. Another agreement was executed between PLA and Khaitan on 13.12.1994 whereby Khaitan assigned the rights in respect of the film for the whole world to PLA. These rights were assigned for a period of 11 years from the date of delivery of the Betacam Umatic Cassette at the cost of the lessees i.e., PLA.

6. As aforesaid in the year 1999, Khaitan filed Suit No.256 of 1999 claiming the aforesaid the injunction. PLA filed their suit as the Betacam Umatic Cassette was not delivered to them in accordance with the agreement dated 13.12.1994. Despite correspondence being exchanged between the parties, the Betacam Umatic Set was not delivered to the PLA by Khaitan. According to Khaitan, PLA had not paid the agreed consideration under the lease agreement.

7. PLA filed their Motion No.1117 of 2000 wherein certain orders were passed. The first order was passed on 31.3.2000 when both Khaitan and his advocate were present as reflected from the order. The Court recorded the statement of Khaitan that negatives of the film would be deposited in the laboratory intimated by PLA within a period of 7 days. Khaitan also stated that the Betacam Umatic Cassette would be prepared within one week after the deposit of negatives with the laboratory.

The amount of Rs.1 lakh being the balance consideration under the lease agreement was to be kept ready by PLA in Court on the next date of hearing which was 7.4.2000. On 7.4.2000, neither Khaitan nor his advocate were present in Court. PLA was directed to hand over a cheque of Rs.1 lakh, which was produced by them in Court to Khaitan or his counsel. Khaitan was also directed to inform the laboratory to release the Betacam Umatic Cassette to PLA. Then the aforesaid injunction order was passed.

8. Khaitan now seeks a modification of that order dated 7.4.2000 and an injunction against the Defendants in his suit.

9. On a bare perusal of the order dated 31.3.2000 and 7.4.2000 passed in Notice of Motion No.1117 of 2000, it is obvious that Khaitan was aware of the orders which were passed by the Court. He was aware that it was necessary for him to furnish the Betacam Umatic Cassette. Neither he nor his Counsel had stated at any point of time that Betacam Umatic Cassette was already with the PLA and, therefore, the agreement of 1994 had commenced from the date of the agreement. In fact, Khaitan who was present in Court on 31.3.2000 agreed to inform the Laboratory to prepare the Betacam Umatic Cassette for the PLA in accordance with the agreement of 1994. Prima facie, therefore, the agreement would commence only from the date on which the Betacam Umatic

Cassette was handed over to the PLA. Khaitan in his affidavit in support of the Motion No.1587 of 2006 has feigned ignorance about the orders passed by this Court on 31.3.2000 and 7.4.2000. In my view, this is a wholly dishonest stand adopted by Khaitan. In fact, his dishonest intentions in filing Suit No.256 of 1999 have been adverted to in the order dated 12.2.1999.

10. It was sought to be contended on behalf of Khaitan that PLA is continuing to act under the agreement of 1994 although the term of the agreement has expired after 11 years. This submission is made on the basis that Betacam Umatic Cassette was with PLA when the agreement of 1994 was executed and therefore the agreement would cease to be operative after December 2005. According to the learned Counsel appearing on behalf of Khaitan the film was telecast through satellite in the year 1999 on Sony T.V. which indicates that PLA did have Betacam Umatic Cassette in respect of the film. The learned Counsel relies on the judgment in the case of *Morris v/s. Baron & company*, **1918 AC 1** in support of her submissions that the intention of the parties entering into an agreement in 1994 was to rescind the earlier agreement and to substitute it by the 1994 agreement. This judgment has no application in the present case as the two agreements were in respect of two different territories.

11. In my view, the entire approach of Khaitan

appears prima facie to be dishonest and, therefore, in such circumstances there is no need to grant any relief in either of the Motions. In any event, if at all, Khaitan is aggrieved he would be entitled to damages. Motions dismissed.